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Sunday, October 16, 2005

Rights of travel

A large variety of rights of travel, especially the rights to travel between states and to leave the United States itself, are incorporated into the United States Constitution via the Ninth Amendment and substantive liberty under the Due Process Clause. (Take your pick: the Constitution is quite redundant when it comes to asserting unenumerated rights -- we have, alas, repeatedly found it necessary in our history to remind judges that unenumerated rights are the most crucial part of our laws).

Travel rights are found as early as the Magna Carta:

> It shall be lawful to any person, for the future, to go out of our kingdom, and to return, safely and securely, by land or by water, saving his allegiance to us, unless it be in time of war, for some short space, for the common good of the kingdom: excepting prisoners and outlaws, according to the laws of the land, and of the people of the nation at war against us, and Merchants who shall be treated as it is said above.

The Articles of Confederation, the first constitution of the United States, expressly protected the right to "free ingress and regress to and from any other State."

These rights of travel, as with a large variety of other traditional rights, were incorporated into the Constitution via the Fifth Amendment Due Process Clause and the Ninth Amendment Unenumerated Rights Clause. Rights of travel were recognized in the 1999 case *Saenz v. Roe.*

During the struggle for freedom in Eastern Europe, the Soviet Union and their puppet communist governments turned their states into vast prisons by restricting freedom to leave their countries. The Berlin Wall was a highly visible but small part of this effort. Many died in their efforts to defect to the free West. Thus *reisen freiheit* (freedom of travel) became a key demand of those seeking freedom from these prison states, and when freedom of travel became possible these states fell. Restrictions and burdens on the right to leave a country are key symptoms that said country is no longer free.

Posted by Nick Szabo at 2:05 PM

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Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

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"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

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2 comments:

George Thompson said...

"Prison State" is a very appropriate term for many of the communist countries. The Museum of Communism has quite a bit more information about what people were trying to escape from.

5:22 AM

Serveto said...

The fallacy in this argument is that you are comparing apples and oranges. Or rather, inter-country travel to intra-country travel.

The U.S. may allow intra-country travel, but it puts limits and barriers on inter-country travel. Just ask any illegal alien. Although I have not researched the matter--and don't intend to--I'm sure the USSR did not excessively block intra-country travel.

3:58 AM

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